CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

February 8, 2007

Call To Order: Chairman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (Commission) to order at 10:00 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Randolph, Commissioners Phil Blair, Bob Leidigh, and Ray Remy were present. Commissioner Gene Huguenin was absent.

Item #1. Public Comment.

There was none.

Consent Items #3, 4, 5, 6, 7, 8, and 9.

Commissioner Remy moved to approve Consent Items 3, 4, 5, 6, 7, 8, and 9.

Item #3. In the Matter of Steven Bruce Ruff and Bruce Ruff for Sheriff 2002, FPPC No. 05/258. (1 count)

Item #4. In the Matter of Daniel Maxey, FPPC No. 06/860. (1 count)

Item #5. In the Matter of Julie Lopez Dad, FPPC No. 05/406. (2 counts)

Item #6. In the Matter of Michael Torr, FPPC No. 04/589. (2 counts)

Item #7. In the Matter of Elizabeth Pierson, FPPC No. 05/382. (1 count).

Item #8. Failure to Timely File Major Donor Campaign Statements.

a. **In the Matter of Grubb & Ellis/BRE Commercial, FPPC No. 06-0561.** (1 count).

b. **In the Matter of North County Trauma Associates, FPPC No. 06-0562.** (1 count).

c. **In the Matter of Rodrigo Iglesias, FPPC No. 06-0766.** (2 counts).

d. **In the Matter of William L. Strong & Shelby C. Strong, FPPC No. 06-0849.** (1 count).

e. **In the Matter of Sofia Hernandez, FPPC No. 06-0933.** (1 count).

Item #9. Failure to Timely File Late Contribution Reports – Proactive Program.

a. **In the Matter of Trini Jimenez for City Council, FPPC No. 04-0551.** (1 count).

b. **In the Matter of Grubb & Ellis/BRE Commercial, FPPC No. 06-1143.** (1 count).

c. **In the Matter of Grubb & Ellis/BRE Commercial, FPPC No. 06-1143.** (1 count).

Commissioner Blair seconded the motion. Commissioners Remy, Blair, Leidigh, and Chairman Randolph supported the motion, which carried with a 4-0 vote.

ITEMS PULLED FROM CONSENT

Item #2. Approval of the January 12, 2007, Commission meeting minutes.

Commissioner Leidigh had a few minor changes to suggest: on page 5, the fifth full paragraph introduces him as "Chairman." This should read as "Commissioner Leidigh." On page 19, the first full paragraph, second sentence reads, "It says that you can use things not enumerated." This should read "Those funds for things not enumerated." In the last line of this same paragraph, add the word "the" between "about" and "question." On page 23, ninth paragraph, the word "happened" should be changed to "happen." On page 24, paragraph 4, Commissioner Leidigh refers to Mr. Wallace's answer "down below," which does not make any sense under the circumstances. On page 34, second to the last paragraph, strike the second sentence.

Commissioner Leidigh moved to approve the minutes as amended.

Commissioner Blair seconded the motion. Commissioners Remy, Blair, Leidigh, and Chairman Randolph supported the motion, which carried with a 4-0 vote.

Item #10. Reconsideration of Revolving Door Regulation 18746.3 (Section 87406.3).

Commission Counsel Brian G. Lau and General Counsel Luisa Menchaca came before the Commission to present revisions to the recently adopted regulation 18746.3. Utilizing a slide presentation, Mr. Lau explained that the Commission adopted 18746.3 interpreting the one year ban for local officials at its December meeting. In responding to the first request for advice from a former city council member, who had retained a position with the county's vector control board, staff found some ambiguity with the regulation's language. Specifically, whether the ban should apply only after an official completely leaves local service or whether the ban should apply when the official leaves that particular position which subjected the official to the ban. Because the determination of which interpretation the Commission intended would lead to significantly different results, and considering that the regulation had only recently been adopted,

staff found the best approach to address the issue was to bring the regulation back before the Commission for further clarification. In terms of the specific drafting problem, he stated that section 87406.3 provides that an official holding a specific position is restricted for 12 months after leaving that office or employment. Interpreting 87406.3, the regulation provides that the official must leave local service. However, leaving local service is not defined, and one can interpret leaving local service as a requirement that an official must leave all local positions before the ban will apply or as a requirement that an official leave that particular position. If the Commission intended the ban to apply only after the official leaves all local positions, the Commission should elect Decision Point 1, Option 1. If the Commission intended for the ban to commence once an official leaves that particular position, which subjected the official to the ban, the Commission should elect Decision Point 1, Option 2. Mr. Lau presented a slide representing the most basic example of the drafting problem using the example of a city manager who accepts a county position. Under the example, there is a question as to whether the former city manager has left local service because of the second position with the county. Mr. Lau explained that there could be several variances of the problem, such as a time gap between the position with the city and the position with the county or even concurrent employment with the county and the city. Under the current language, if an employee retains a position with a local agency or returns to a position after a break of service, it is not clear whether the local one-year ban would apply. Option 1 would allow an official to represent a private interest before the city because he has not left local service. Option 2 would prohibit an official from communicating with his former agency for 12 months after leaving the particular position that subjected the official to the ban, regardless of any other positions with other local agencies. Mr. Lau stated that interrelated to this general interpretation question is an issue with subdivision (b)(6), which provides that the ban will run for one year after leaving local service for any positions held in the prior 12 months. He repeated that, again, this provision could be interpreted in two ways. First, it could mean that the one-year ban runs for all positions held in the prior 12 months only after the official completely leaves local service. Under this approach, the ban could limit communications up to 24 months after an official has left any particular position. Mr. Lau stated that this would be the most appropriate approach if the Commission elected Option 1. However, Mr. Lau explained that the subdivision could also be interpreted to mean that the ban would run for 12 months after leaving any one particular position and that the language only means that the official must look back 12 months to determine which positions would still be subject to the ban. If the Commission were to elect Option 2, Mr. Lau explained that this would be the most appropriate interpretation and that under Option 2 staff would recommend removing the ambiguous language in subdivision (b)(6).

Commissioner Leidigh stated he was not present when the regulation was presented the first time. Commissioner Leidigh stated that the intent of the Legislature was fairly clear to him, adding that what they were concerned with was someone coming back and lobbying persons they previously worked with or may have hired within 12 months of leaving that position. He wanted to ensure this was, in fact, the way it would work. As an example, he stated that a person presently with the county, looking back 12 months, was the city manager. Until the 12 months after leaving the city manager position expires, that person would be unable to return to deal with the city.

Mr. Lau agreed with Commissioner Leidigh's understanding, clarifying that this was the result under Option 2.

Commissioner Leidigh asked Mr. Lau to clarify if this is what he wanted the Commission to change – going from what essentially was before.

Mr. Lau explained that currently the regulation was ambiguous and staff wanted to return it for the Commission to determine which interpretation would be the most appropriate.

Commissioner Leidigh, asking for clarity, stated he could not understand why, on page 3, quasi-legislative and quasi-judicial are being defined. Commissioner Leidigh commented that, historically, the reason the Commission got into this ambiguity was that the Commission tried to take a regulation that applied to state and, changing some words, made it apply to local. He continued that now the Commission is finding that perhaps it does not work so well that way. "Quasi-legislative" and "quasi-judicial" are terms defined already in Commission regulations for other purposes of lobbying state agencies, and whether you become a lobbyist or not.

Commissioner Leidigh was concerned that putting those definitions in the regulation may, in fact, narrow the reach of what the Legislature did. The Legislature specifically wanted to avoid those kinds of distinctions and so said "any matter" is an administrative matter. Now, this Commission comes along talking about quasi-legislative or quasi-judicial. Nowhere within those two definitions combined, do we get a contract. They are not in those lists. At the state level, people are not required to register as lobbyists if they are lobbying on contracts. Commissioner Leidigh continued, stating that it seemed to him that the Legislature sought, in this bill, when they said "any matter," to deal with all of those things. He does not want to have someone, in a year or so, come along, with Mr. Williams pursuing them because of complaints that they have been back lobbying their former agency within 12 months of leaving and they have a defense lawyer saying that nothing quasi-legislatively or quasi-judicially has been done.

Mr. Lau explained that subdivision (b)(5) would set up the general rule for the local one year ban and that an official would not be able to influence legislative or administrative action, including either quasi-judicial or quasi-legislative actions. He explained that the terms quasi-judicial and quasi-legislative came from section 87406.3 of the Act. Mr. Lau explained further that as far as a contract, there is an additional requirement that the ban applies to any attempt to influence a discretionary action involving the issuing, amending, awarding, or revocation of permanents, licenses, grants, or contracts. The intent in including the definition of quasi-judicial and quasi-legislative was to point out that unlike the state one-year ban, which would not apply to quasi-judicial proceedings, the local ban did indeed apply to quasi-judicial proceedings. He stated that staff added the definitions to point out that the local ban is different and that local officials need to consider all proceedings.

Commissioner Leidigh agreed with Mr. Lau's conclusion that "they need to consider all proceedings." He stated he thought that is what the Legislature sought to achieve. His concern was whether adding those definitions, parroting the state definition, would allow anyone to argue that the Commission has narrowed it. Commissioner Leidigh clarified that he does not want the

Commission to be narrowing it. He wants it to be broad because it is his belief that is what the Legislature wanted.

Mr. Lau explained that the definitions included were drafted as the broadest definitions for those two terms. He commented that the definitions for the terms provided in the current regulations were drafted in reference to state proceedings. He stated there were no current definitions that would apply to local proceedings.

Chairman Randolph was not certain what Commissioner Leidigh's concern was with regard to contracts.

Commissioner Leidigh explained his concern was that first, the Commission starts out by repeating the statutory language and then they start out adding in new language and defining terms. He did not want the Commission to inadvertently narrow the application. He concluded that if Chairman Randolph was comfortable that the Commission was not narrowing it, and the Commission was merely being helpful, that would be fine with him. However, when he sees the state terms being applied in this context, he stated it concerns him because the state law works differently.

Commissioner Remy asked Mr. Lau to assume, under Option 1, that he is a city councilman in the City of Los Angeles who has resigned his position and is then appointed president of the Chamber of Commerce, which lobbies the city. Because of his being president of the Chamber, the mayor appoints him as a member of the Metropolitan Transportation Authority (MTA) Board, which is a governmental agency for which he serves concurrently. He asked Mr. Lau what he could and could not do based on that scenario under Option 1.

Mr. Lau explained that under Option 1, since he is employed by a local agency, the revolving door provisions would not apply to him and he could go back before the city, even in representation of a lobbyist.

Commissioner Remy continued that if he were not appointed to the MTA Board, then he could not influence the city for a year. Mr. Lau agreed.

Commissioner Remy stated it does become a bit confusing depending on how you are appointed and how you can avoid this if you are appointed to some agency, some people being treated one way and others another way.

Mr. Lau explained that this was the problem that was presented in an advice letter with a city council member who happened to have a position on the county's vector control board.

Commissioner Remy asked if, as there are no term limits, service could be for 10 years on MTA and if during that entire 10 years whether one could be free to lobby the City of Los Angeles.

Mr. Lau agreed, again pointing out that there is only a one-year ban to begin with and, so, after the one-year ban, it would be immaterial.

There was no further public comment on this item.

Chairman Randolph offered that Option 2 was the more logical and consistent interpretation. She asked Mr. Lau to walk her through a scenario if the Commission were to choose Option 2.

Mr. Lau explained that the issue with the additional 12 months is how the identical language is interpreted for the state ban. For the state ban, an official would look back to all positions held in the prior 12 months. Once the official completely leaves, the ban may apply to some positions for up to 24 months. Under Option 2, Mr. Lau recommended removing the ambiguous language so that there would be no confusion with the language as used for the state ban. He explained that one would be subject to the ban for 12 months after leaving City A for any appearances before City A, regardless of your position with County B. At the point of leaving County B, one would be subject to another 12 months, but only for appearances before County B.

Commissioner Remy stated that he did not care for Option 2, but thought that Option 1 would create many opportunities for unequal or confusing treatment. There would be people trying to get appointed somewhere in an effort to avoid the ban, particularly if coming from a fairly large jurisdiction. His thought was that there were some very difficult limiting factors if it is done, but thinks that is probably the Legislature's intent and would, therefore, support Option 2 with some reluctance.

Commissioner Remy moved to adopt Option 2 as presented by staff, including the language on page 3, line 21.

Commissioner Blair seconded the motion. Commissioners Remy, Blair, Leidigh, and Chairman Randolph supported the motion, which carried with a 4-0 vote.

Item #11. Prenotice Discussion of Proposed Amendments to Regulation 18402 – Requiring A Committee Controlled By, Or Primarily Formed To Support Or Oppose A Candidate for Election Purposes To Include The Candidate's Name In The Name Of His Or Her Committee.

Senior Commission Counsel Andreas C. Rockas, General Counsel Luisa Menchaca, and Chief of the Technical Assistance Division Carla Wardlow, came before the Commission to present proposed amendments to regulation 18402, which governs how political committees are to be named under the Act. Mr. Rockas explained that these amendments are currently being considered for prenotice discussion. He stated that currently there is no requirement in the Act that the name of a candidate election committee contain the name of the candidate it supports or opposes. Most specifically, there is currently no requirement that the following two types of committees contain the name of the candidates they promote or oppose. First, a committee controlled by a candidate for purposes of that candidate's election and, second, a committee primarily formed to support or oppose a candidate for election purposes. Mr. Rockas further explained that whenever a committee's identification is required by law, the two above-described types of committees would also be required to at least disclose the last name of the candidate. The goal of the proposed amendment is to provide the public with more clarity as to who

controls candidate election committees by identifying the names of candidates in the names of such committees.

Commissioner Leidigh asked what the problem was which now leads the Commission to consider making this change.

Mr. Rockas responded that, admittedly, most committees associated with supporting candidates do have the names of the candidate in the name of the committee; however, there is a minority of committees that do not. He explained that this idea came from the Technical Assistance Division as they thought it would be nice to completely wrap this up to ensure there was clarity with regard to all types of candidate-associated committees for purposes of election to require at least the last name of the candidate in that committee.

Commissioner Leidigh asked Ms. Wardlow to explain what it was that came to her attention that appeared to be a problem.

Ms. Wardlow explained that the most recent problem presenting itself was with regard to their own attempts to monitor the termination of committees by state candidates. She referred to regulation 18404.1, which requires that state candidate committees be terminated within a certain period of time after the candidate either wins an election, loses an election, or leaves office. She further explained that in attempting to monitor that, notify committees, and keep track as to whether they are terminating on time, the Technical Assistance Division has discovered that there are many committees which cannot be identified or require a lot of research in order to identify them. She explained this has been a goal of hers for a long time because, as the Act has evolved, different provisions have been added, requiring all kinds of committees to include certain identifying information, e.g., sponsored committees and ballot measure committees. She further explained that it appears to fit in with the Act's purpose of disclosure to the voters to require that information in the name of the committee so that when the committee's name is required to be identified on an advertisement, for instance, the public can see who it is. She stated there were some interesting examples of committee names that are misleading or just impossible to identify. She gave one example of a candidate controlled committee name: "This one for the Gipper."

Commissioner Leidigh expressed his understanding of Ms. Wardlow's administrative problem. He asked if opposing a candidate, would the candidate's last name have to be given. He was concerned this would give rise to all sorts of creative mischief. He gave the example of a mailing received with Jones' name on it, but being sent by Jones' opponent, stating all sorts of terrible things – leading the public to think the document came from Jones' supporters when, in fact, it was sent by Jones' opponents. Commissioner Leidigh was concerned whether the Commission would end up with the "law of unintended consequences," that is, having a particular thing wanting to be accomplished, but, requiring this, wondering whether it would really lead to better information for the public. He stated he could recall at least one instance where he was involved with an election in a local jurisdiction where they had what amounted to "political parties only." They did not meet the definition in section 85205 and, therefore, did not fall out of candidate control committee under that definition. They would do a slate in support of their group of candidates and, whether the Commission requires them to then list all these

candidate names in there, they may have strong feelings that they want to send that communication out under the banner of their party. He reiterated he was a little reluctant to go down this path to solve the problem of identifying those candidate control committees that need to terminate, although he was sympathetic to Ms. Wardlow's administrative burden.

Ms. Wardlow stated she would be just as happy to limit the language of the regulation to only controlled committees and not primarily formed committees. She could see Commissioner Leidigh's point and assumed if he were primarily formed and not controlled by the candidate, he may want to include a requirement as to whether the committee supports or opposes the candidate, which then may open up more issues. She asked the Commission to go forward with including the candidate's name if the candidate controls the committee.

Commissioner Leidigh asked whether section 84305(c) presently requires that on a mailing. Ms. Wardlow responded that the candidate's name is required to be on a mailing.

Commissioner Leidigh stated that, at least in that regard, there is already a requirement in the statute as to that particular type of communication, maybe differentiated from a TV or radio spot, but, at least in that particular type of communication, the candidate's name has to be there if it is a candidate's committee. They would not be treating other things particularly differently. Ms. Wardlow agreed.

Commissioner Leidigh commented that it is narrower in its reach and perhaps less likely to result in unintended consequences. He was still concerned and stated he would have to think about it.

Commissioner Blair asked for an example as to who would be opposed to this thought.

Ms. Wardlow offered that perhaps a candidate not wanting to get their name out. She explained that if someone putting out a "hit" piece or an advertisement opposing one's opponent, being required to identify the name of one's committee, they may want to at least obscure the fact that they control that committee. She added that obtaining this sort of information is easy if you do the research. She explained that it may also sometimes just be a way of putting an interesting name out there that may well result in donations.

Commissioner Blair clarified that this would be the reason they would oppose putting their name on it – if it were a "hit" piece, which would be all the more reason to proceed with the change and force them to put their name on it.

Ms. Wardlow agreed.

There was no public comment.

Chairman Randolph offered that since this was prenotice, the Commission could do two different options: (1) have it apply only to committees controlled by the candidate for the purpose of the candidate's election; and (2) take in primarily formed committees.

Mr. Rockas offered that perhaps with regard to the second option, it could be limited to "primarily formed to support" only – or leave it "primarily formed to support or oppose", but add additional language to address the issues that Commissioner Leidigh brought up, e.g., where a committee might use the name of the candidate it is opposing, and now make it look like it is an ad by the candidate opposing himself.

Commissioner Blair asked Mr. Rockas for an example where a piece might be put out in opposition to an opponent, but made to look as if the opponent sent it about himself.

Mr. Rockas responded that the hypothetical coming to his mind, in an attempt to illustrate what he thought Commissioner Leidigh was concerned about, was that under this new proposed requirement, where the last name of the candidate being opposed has to be stated in the name of the "primarily formed to oppose committee," the name could be "Committee That Likes Candidate Smith." If you go to the Secretary of State and pull the Statement of Organization, it would show that you are a committee primarily formed to oppose Candidate Smith. This new FPPC requirement of putting the last name "Smith" in the name of the committee has now been met. Now, it appears, as the content of your communication goes out into the airwaves, etc., that you are completely trashing Smith, but you have also complied with the regulation which states "Mr. Smith's name has to be in it" – and yet, the rest of the name of your committee, other than the last name "Smith," seems to indicate that Smith is putting it out – or that it is being put out by someone supporting Smith.

Commissioner Blair continued that the "tag line" would then be, "Brought to you by the committee to support Smith" – after it just dumped on him.

Commissioner Leidigh added that they could probably do that now under current law. His concern was that when they get caught and the newspaper reporter calls up, they would say "We're just following the FPPC's new regulation." He added that he was very familiar with problems of committees that use clever names. He agreed that the Commission would need to take whatever steps necessary within the bounds of the First Amendment to deal with that, but each of these incremental steps continue to push the envelope and at some point, maybe somebody pushes back. Commissioner Leidigh wanted to ensure the Commission does not go too far, stating, once again, his concern about "the law of unintended consequences" – that is, thinking this looks like a good idea and then, the next thing we know, we have a problem and find ourselves trying to dig our way out of it.

Chairman Randolph stated that, for adoption, the Legal Division should return with the options discussed. She added it would be great if there was a way to draft the "primarily formed to oppose" language. She thought it would be fine as well if there was an option to just eliminate that category of committees.

Ms. Wardlow commented there was a section in the Act which applies to "primarily formed ballot measure committees" requiring them to include in their name whether they support or oppose, and identify the letter or number of the ballot measure and state whether the committee is formed to support or oppose that particular measure.

Commissioner Blair added it would be helpful if, in formulating their thinking, the Legal Division would give examples on how the different options could be used or abused.

Item #12. News Media Communications Guidelines.

Chairman Randolph advised that Jon Matthews, FPPC's Information Officer, prepared the guidelines before the Commission in an effort to streamline the existing policy and that these guidelines would be posted onto the FPPC's Web Site.

Commissioner Blair asked whether the press was banned from contacting the FPPC Commissioners for opinions on rulings.

Mr. Matthews responded that because of the First Amendment, the press can contact whomever they want and commissioners are free to speak, as they have done in the past.

Chairman Randolph added that commissioners could also choose not to speak to the press.

Mr. Matthews had a proposed change to the policy at the top of page 2, after the sentence stating, "no news advisory or news release is issued without the approval of the Commission, Chair, or his or her designee." He explained that in order to ensure that commissioners and staff are fully aware of what is being sent out to the public, he would propose adding a sentence which would read: "Proposed releases and advisories are e-mailed to other commissioners and staff prior to public release."

Commissioner Leidigh asked for clarification on whether the Commission would not even confirm receipt of a formal complaint.

Mr. Matthews stated that was his understanding.

Commissioner Leidigh further asked if this would comply with the Commission's responsibilities when a formal complaint is received under the Act, which relates to the 15 days' response time.

Mr. Matthews responded that the Act requires publication of a finding of probable cause and accusation, which is done in the Executive Director's report.

Chairman Randolph clarified that Commissioner Leidigh was referring to the regulation when filing a formal complaint – notification. The complainant must be notified within 14 days; regulation 18360 states that the initial response shall be made in writing to the complainant within 14 days by the Executive Director.

Commissioner Leidigh asked if something would be sent out to the person who complained, adding they made a formal complaint signed under the penalty of perjury and are free to release the FPPC's response letter.

Mr. Matthews responded that a complainant could release anything they chose.

Commissioner Leidigh added that FPPC would still sit there saying, "We don't know anything about it."

Chairman Randolph stated that in the past, the Commission has said, and maybe it would be re-added back into the current version, that if the complainant publicizes the complaint, we will confirm.

Mr. Matthews stated that the definition of "publicize" was the difficulty.

Commissioner Leidigh added he understood that people could stand outside the FPPC's door, trying to hold a press conference. He stated he was not making a policy comment, but, rather, asking a question to clarify his understanding of the policy the Commission is currently following.

Mr. Matthews stated he did not think there was anything in the Guidelines precluding the Commission from confirming receipt of a complaint if the complainant has made it so obviously public that he sent it to us.

Mark Krausse, Executive Director, interjected that past practice by Mr. Matthews' predecessor would be to ask, "If you're aware of this complaint, would you fax me a copy." Mr. Krausse added that it got to be uncomfortable with the press. The thought in this version was to not advertise the fact that if you can claim you have knowledge of this complaint, we'll confirm it. He stated the thought was to approach it on a case-by-case basis.

Commissioner Remy stated that the press is always a sensitive issue in any area and added that, in looking at the policy, it states that "you will consult with senior staff, the Director, and the Chair." This seemed a little shaky to Commissioner Remy that "you act under the direction of the Director and the Chair."

Mr. Matthews agreed.

Commissioner Remy stated that the language does not suggest that in this policy; rather, it sounds that, if, in your judgment or your successor's judgment, you want to arrange an interview between a senior staff person and a member of the press, you could go ahead and do it if you thought it was wise to do. Commissioner Remy stated he thought the Commission needed to be very explicit that this would be fine as long as it has the approval of the Director or the Chair.

Mr. Matthews agreed.

Commissioner Remy pointed out that that is not the way the policy is written.

Mr. Matthews commented that that was the intent of the policy.

Commissioner Remy suggested that the policy could lead someone to a different set of conclusions.

Mr. Krausse stated that this could be changed to make it more specific relating to the approval.

Chairman Randolph asked for clarification if this was the ninth bullet point – "when preparing your response, communication staff routinely consults with … ."

Mr. Krausse confirmed.

Chairman Randolph suggested modifying that language slightly, to indicate "consults with and operates under the direction of the Director and the Chair."

Commissioner Remy stated this would cover the area of arranging interviews and other things because the same thing applies – "You don't want to tie the hands of your job, but on the other hand, it's always good to have a little protection because you can get skewered out in public."

Mr. Matthews agreed, adding that he was fully cognizant that he represents the public voice of the Commission.

Chuck Bell of Bell, McAndrews & Hiltachk, LLP, came before the Commission speaking on his own behalf. He commented that in comparing the proposed language with the existing language, his particular concern focused on the language relating to investigations, which he believes has been of interest to the Commissioners as well. His observation was that the proposed draft compared with the existing language, while touching many of the bases relating to confidentiality protection of due process, has a definite flavor which he believes to be more neutral and less sympathetic, and certainly less acknowledging of bona fide concerns arising about confidentiality, which are interestingly and nicely stated in the existing policy. He asked, first, if there were any "between the lines" change of policy intended with respect to confidentiality and, second, with respect to the last provision of the existing provisions and comparing that with the proposed draft, was there any intended change with respect to the position the Commission would authorize staff to take about commenting on issues raised. Mr. Bell further stated that quite often public and media communications about matters precede the filing of an actual complaint, but may outline the issues to be raised in a complaint. He added that his clients have been on the other side of the recipients of press comment that precedes the filing of a complaint. He stated he believed it was an important point because if the Commission or staff become involved in commenting on issues that the Press may call about to get a comment on – is this possibly in violation of the Act – and a commission staff person goes on record on that point commenting about it, it has an accelerant effect on both the fieriness of the story, but also an accelerant effect on whether the Commission then looks harder at this complaint when it comes in. He was not suggesting a particular direction or that the Commission not approve the revised comment, but he did think these were serious questions for people who are the subject of press attention where an allegation is made that may be founded or unfounded about possible violations of the Act and then the Commission is drawn into that controversy which can often become an accelerant to both the press story and the credibility with which the Commission looks at a complaint once it has actually received it.

Chairman Randolph agreed this was a good comment. She answered Mr. Bell's question by stating that there was no intent to change the Commission's existing approach to press and to how the Commission responds to complaints. She added that the goal was consistent with Mr. Matthews' original suggestion, adding that press policies were just a little chatty, unnecessarily so, and something shorter and more straightforward would make sense. She reiterated that there was certainly no intent to change the fundamental policy behind the Guidelines. She suggested perhaps talking about "what is not in there" that maybe should be added back. She stated she definitely did not want to create the impression that it is a different policy.

Mr. Matthews directed the Commission to the first bullet on page 2, which states that "Commission staff can not comment or speculate on a specific situation, occurrence, or disclosure document that has not been formally and publicly addressed by the Commission under the authority of the Act." He stated this was even stronger than the current language. It was Mr. Matthews' intent to fully mirror the existing policy in terms of not discussing investigations. He added that he does provide information on the law and regulations.

Chairman Randolph stated that the following existing language found on page 2, at the beginning of the Investigation section, would be added back into the new, revised guidelines: "It has long been the policy of the FPPC not to discuss details of ongoing investigations or even to confirm that an investigation is being conducted. This policy stems from the need to protect the integrity of an investigation, including the confidentiality of complainants, witnesses, and individuals under investigation, as well as to ensure due process for those accused of violations of the Political Reform Act."

Commissioner Blair added that the idea is to avoid frivolous claims made by an opponent.

Item 13. Legislative Report.

Executive Director Mark Krause advised they have been speaking with authors and have received commitments on a number of sponsored proposals. The balance of these proposals are still being worked on and the Commission will be updated next month.

Item 14. Executive Director's Report.

Executive Director Mark Krause advised that the $604,000 from the Governor's budget includes 4.1 positions.

Mr. Krause announced the names of new employees: Heather Rowan, Jesse Mainardi, and Jessica Estante. He advised that Roman Porter, Press Assistant, started employment today as a Staff Services Analyst and will be doing telephone advice.

Commissioner Remy congratulated Andy Rockas on his new title.

Chairman Randolph also congratulated Kourtney Vaccaro and Amanda Saxton.

Mr. Krausse added that these promotions were well deserved by all staff, and are also a part of the strategic plan which serves to ensure that people are rewarded for their good work by paying them what they deserve. This is the "retention" part of recruitment and retention.

Item 15. Litigation Report.

Chairman Randolph announced that the matter of *California ProLife, Inc. v. Karen Getman, et al.*, will be heard on Monday morning, February 12, in the 9th Circuit Court of Appeal.

Chairman Randolph adjourned open session at 11:24 a.m., advising the Commission would immediately go into closed session.

The Commission returned to open session at 11:50 a.m. Chairman Randolph advised that no reportable action was taken in closed session. The meeting was adjourned at 11:50 a.m.

Dated: February 22, 2007

Respectfully submitted,

_____
Elaine Hufnagle
Commission Assistant

Approved by:

_____
Ross Johnson
Chairman